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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223065
Party	Defendant C2 Management Group LLC
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**BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application

Serial No. 86/256,711

Mark: PN (Stylized/Design)

Class: 042

Application Date: April 18, 2014

Publication Date: April 7, 2015

PN, LLC, a Delaware limited liability company,

Opposer/Plaintiff,

V.

C2 Management Group LLC, a Maryland limited liability company,

Applicant/Defendant.

Opposition No. 91223065

**MOTION TO STRIKE AND/OR
DISMISS OPPOSITION AND, IF
APPLICABLE, MOTION FOR
RECONSIDERATION OF ANY EX
PARTE ORDER GRANTING A
LENGTHY EXTENSION OF TIME
TO FILE OPPOSITION**

Pursuant to 37 C.F.R. § 2.101(a) and § 2.101(c), Applicant moves to strike and/or Dismiss the Opposition filed by PN, LLC¹ as for lack of jurisdiction based upon

¹ “Opposer, PN, LLC, a Delaware limited liability company having a place of business at #171, 102 NE 2nd Street, Boca Raton, Florida 33432,” is simply the abbreviated name of Paul Niedermeyer. Paul Niedermeyer primarily does business under the PAUL.COM (Reg. No. 4,546,055) and PAUL DOT COM (Reg. No. 4,546,054) names, which are the names he utilizes for his computer consulting work. Although not directly at issue in this Motion to Strike, Opposer falsely stated the nature of services and dates he provided services doing business as PN, as Mr. Niedermeyer has consistently stated that PN is for “Management Consulting,” that “PN provides strategic, financial, marketing leadership and advisory services,” and that “With PN, he [Paul Niedermeyer] serves as a management consultant and business advisor to venture-

1 the filing date of the Opposition, the Notice of Publication of the Applicant's mark, the
2 Trademark Act, the federal regulations and Trademark Rules. If any request for an *ex*
3 *parte* extension was filed by Opposer, and because no good cause for a lengthy
4 extension request exists or could be alleged, such a request must be denied. If any such
5 action(s) occurred, they occurred *ex parte*, and no notice by the Opposer was provided
6 and the Board did not provide any notice of any decision, if any.
7

8 The Applicant's PN design mark is entitled to be registered and was approved to
9 be published.

10 The mark of the application identified appears to be entitled to
11 registration. The mark will, in accordance with Section 12(a) of the
12 Trademark Act of 1946, as amended, be published in the Official Gazette
13 on the date indicated above for the purpose of opposition by any person
14 who believes he will be damaged by the registration of the mark. If no
15 opposition is filed within the time specified by Section 13(a) of the Statute
16 or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of
Patents and Trademarks may issue a notice of allowance pursuant to
section 13(b) of the Statute.

17 Notice of Publication of Mar. 18, 2015, PN (Stylized/Design) mark, Ser. No.
18 86/256,711.

19 **Significance of Publication for Opposition:**

20 * Any party who believes it will be damaged by the registration of
21 the mark may file a notice of opposition (or extension of time therefor)
22 with the Trademark Trial and Appeal Board. If no party files an
23 opposition or extension request within thirty (30) days after the
publication date, then eleven (11) weeks after the publication date a notice
of allowance (NOA) should issue.

24
25 backed startups and major global technology corporations." It therefore appears that Mr.
26 Niedermeyer's PN trademark application, Serial Number 86/711,994, filed simultaneously with
his Opposition, may constitute fraud upon the U.S.P.T.O.

1 Trademark Official Gazette Publication Confirmation of April 7, 2015, PN

2 (Stylized/Design) mark, Ser. No. 86/256,711 (emphasis in original).

3 An opposition proceeding is commenced by filing in the Office a *timely*
4 notice of opposition with the required fee.

5 37 C.F.R. § 2.101(a) (emphasis added).

6 The opposition *must* be filed within thirty days after publication (§2.80) of
7 the application being opposed or within an extension of time (§2.102) for
8 filing an opposition.

9 37 C.F.R. § 2.101(c)(emphasis added).

10 Any request to extend the time for filing an opposition must be filed
11 before thirty days have expired from the date of publication or before the
12 expiration of a previously granted extension of time, as appropriate.

13 37 C.F.R. § 2.102(c).

14 The time period for filing an opposition elapsed long ago, on May 7, 2015. No
15 party filed an opposition within the opposition period.

16 **Objections To Any Requested Extension Of Time To Oppose And Motion For**
17 **Reconsideration Of Any Decision Granting A Lengthy Extension Of Time To File**
18 **Opposition**

19 No extension request to oppose was filed, the USPTO filing system did not note
20 any such request, no ESTTA notice was provided, and Opposer did not notice any party
21 as to any potential or filed extension request. No information or documents were sent to
22 the Applicant by either the Opposer or the Board showing any decision(s) or action(s)
23 taken with respect to any extension request(s).
24

25 Once the Board has acted upon a request for an extension of time to
26 oppose, the Board will send the applicant a copy of the extension request
together with the Board's action thereon.

1 Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) 203.04 (Service).

2 The Board’s action on the extension request will provide notice to the
3 applicant of the extension request.

4 TBMP § 210 (Objections to Request). No notice of any filing by a potential Opposer or
5 related decision by the Board was provided, and thus, if any action(s) were taken to
6 request a lengthy extension, and such action(s) were granted by the Board, Applicant
7 requests reconsideration of such a decision(s). Thus, as no notice of any kind was ever
8 provided to the Applicant, Applicant objects, if applicable, to any filing of any lengthy
9 extension request(s) by the Opposer and requests reconsideration of any potential
10 granting of such a request by the Board. TBMP § 211.01 (Request for
11 Reconsideration).
12
13

14 If the objections are received after action on the request, and the request
15 has been granted, the objections will be treated as a request for
16 reconsideration. . . . [A]n applicant that receives notification from the
17 Board that an extension request has been filed and granted may submit
objections in the form of a request for reconsideration.

18 *Id.*

19 Because the Opposer filed an Opposition on August 1, 2015, Applicant requests
20 that the Board Strike or Dismiss the opposition for lack of jurisdiction. TBMP § 211.02
21 (Relief after Institution of Opposition).
22

23 Any lengthy extension request by a potential Opposer must assert good cause.
24 37 C.F.R. §2.102(c)(1) and (2).

25 A showing of good cause for an extension of time to oppose over thirty
26 days *must* set forth the reasons why additional time is needed for filing an

1 opposition. Circumstances that may constitute good cause include
2 *applicant's consent* to the extension, *settlement negotiations* between the
3 parties, the filing of a *letter of protest* by the potential opposer, an
4 *amendment* of the subject application, the *filing of a petition* to the
Director from the grant or denial of a previous extension, and *civil*
litigation between the parties.

5 TBMP § 207.02 (Extensions Up to 120 Days From the Date of Publication)(emphasis
6 added). None of these circumstances were present or could have been alleged related to
7 the instant application and opposition, and thus there could be no reasonable grounds for
8 asserting good cause for a lengthy extension.²

10 It is clear from the federal regulations and their application in the TBMP that the
11 30 day automatic extension—effectively extending the deadline to 60 days upon
12 request—is intended to encompass routine client communications, legal and factual
13 investigation, and the drafting and filing of the opposition. This is supported by the fact
14 that the Board’s procedures incorporate and follow the federal rules of civil procedure,
15 and application of the federal rules in similar circumstances, such as those that provide
16 for a strict 28 day deadline for filing motions to amend judgment and 30 day deadline
17 for the filing of appeals. *See* 37 CFR § 2.116(a)(“Except as otherwise provided, and
18 wherever applicable and appropriate, procedure and practice in *inter partes* proceedings
19 shall be governed by the Federal Rules of Civil Procedure.”); Fed. R. Civ. Pro. 59(e)(“A
20 motion to alter or amend a judgment must be filed no later than 28 days after the entry
21 of the judgment.”); Fed. R. Civ. Pro. 58(e)(“Ordinarily, the entry of judgment may not
22
23
24

25 ² It is apparent that the actual basis for the extension the time requested was to create new
26 business, mislead or falsify evidence, including evidence related to a mark’s use in a
nationwide line of commerce, or commit fraud on the U.S.P.T.O. with a new patent application
filed on July 31, 2015, such as PN trademark application, Serial Number 86/711,994.

1 be delayed, nor the time for appeal extended . . .”); Fed. R. App. Pro. 4(a)(1)(A)(“the
2 notice of appeal required by Rule 3 must be filed with the district clerk within 30 days
3 after entry of the judgment or order appealed from.”). The failure to file such a pleading
4 in the required timeframe causes any late filed pleading to be stricken or dismissed as
5 the court lacks jurisdiction to hear such a motion or appeal. *Stephanie-Cardona LLC v.*
6 *Smith’s Food & Drug Ctrs., Inc.*, 476 F. 3d 701, 703 (9th Cir. 2007)(A timely notice of
7 appeal is a non-waivable jurisdictional requirement.”); *Sherman v. Quinn*, 668 F.3d 421,
8 424 (7th Cir. 2012)(“A timely notice of appeal is a prerequisite to appellate review.”).

10 Notably, the Federal Rules of Civil Procedure include a corresponding ability to
11 extend the time to file a notice of appeal, if the motion for extension is filed within 30
12 days, *see* Fed. R. App. Pro. 4(a)(5)(A)(i), and, the “party shows excusable neglect or
13 good cause.” FRAP 4(a)(5)(A)(ii). The federal trademark regulations, however, make
14 clear that they have analyzed FRAP 4(a)(5)(A)(ii) requirements and intend to limit
15 requests for extension to the “good cause” requirement. 37 C.F.R. §2.102(c)(1) and (2).
16 Also, similarly, the Federal Rules of Civil Procedure do not permit an extension for
17 filing a notice of appeal greater than the 30 day extension to be granted after the date
18 beginning the date for appeal—effectively extending the date for filing the notice of
19 appeal to 60 days. FRAP 4(5)(C).

21 The interpretations of the differing standards of “good cause” and “excusable
22 neglect” in the federal rules have been applied by federal courts:

23 The advisory committee note [regarding the 2002 amendments to Rule
24 4(a)(5)(A)(ii)] goes on to state that “[t]he good cause and excusable

neglect standards have ‘different domains.’ ” *Id.* (quoting Lorenzen, 896 F.2d at 232). The relevant question is one of fault, as “[t]he excusable neglect standard applies in situations in which there is fault; in such situations, the need for extension is usually occasioned by something within the control of the movant.” *Id.* On the other hand, *the good cause standard “applies in situations in which there is no fault—excusable or otherwise.” Id.*

Sherman v. Quinn, 668 F.3d 421, 425 (7th Cir. 2012)(emphasis added). The “good cause” requirement cannot be met when “events leading to the late filing were in [a party’s] control.” *Id.* In applying this standard to the instant case, a potential opposer has notice that they must submit their Opposition within the 60 day window after publication, and the filing of the Opposition is entirely within the potential opposer’s control.

In the instant case, the federal trademark rules do not provide for an “excusable neglect” standard that would excuse the failure to file within the original 30-day opposition period, or the automatic 60-day upon-request extension period. In any event, any motion for a lengthy extension (beyond 30 days) could not have met any “good cause” requirement, and the “excusable neglect” standard does not apply. Thus, any assertion that the Opposer relied upon some other party—including the Board—to provide it with the right or ability to file an opposition more than 60-days after the date of publication would not meet the “good cause” standard that is required. To be certain that an appeal can proceed, it is clear from all the authorities that the potential opposer has to file their opposition within 60 days after the mark’s publication.

If an otherwise proper first extension request seeks an extension of ninety days, but does not include a showing of good cause for the time in excess

1 of thirty days, the potential opposer will be granted an extension of only
2 thirty days.

3 *Id.* Therefore, if any lengthy extension were requested, the extension granted could
4 only have been granted for a maximum of 30 days, and any such extension would have
5 expired on June 6, 2015. A potential opposer has a duty to submit their opposition prior
6 to any relevant extension request being awarded.

7 If any element (e.g., . . . showing of good cause, showing of extraordinary
8 circumstances, . . .) essential to a particular request for extension of time
9 to oppose is omitted from the request, the Board can allow the defect to be
10 corrected only if the correction is made prior to the expiration of the time
11 for filing the request, that is, prior to the expiration of the thirty-day
12 opposition period following publication of the subject mark, in the case of
a first request, or prior to the expiration of the previous extension, in the
case of a request for a further extension.

13 TBMP § 208 (Essential Element Omitted). Therefore, as there exist no circumstances
14 that could amount to good cause, no lengthy extension requests are permitted without
15 good cause, a lengthy extension request without good cause is interpreted as requesting
16 a 30 day extension, and no amendments to correct essential elements of any request are
17 permitted, any requested lengthy extension must be denied. In conclusion, any
18 extension, if applicable, would have expired on June 6, 2015.

19 Thus, as no timely Opposition has been filed, under the federal regulations, no
20 opposition proceeding has “commenced” and the Board lacks jurisdiction to institute the
21 Opposition. The Board is requested to strike or dismiss the untimely Opposition filed
22 by PN, LLC on August 1, 2015.

Respectfully,

By: /Scott A. Conwell/
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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2015, a true and complete copy of the foregoing **Motion To Strike And/Or Dismiss Opposition And, If Applicable, Motion For Reconsideration Of Any Ex Parte Order Granting A Lengthy Extension Of Time To File Opposition** has been served on the below opposing counsel/party of record by mailing said copy via First Class Mail, postage prepaid to:

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